

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TRACKMAN, INC.,

Plaintiff,

v.

GSP GOLF AB d/b/a GSPro and
DAVOR BOGAVAC,

Defendants.

Case No. 1:23-cv-00598-NRB

GSP GOLF AB d/b/a GSPro and
DAVOR BOGAVAC,

Counterclaim Plaintiffs,

v.

TRACKMAN, INC.,

Counterclaim Defendant.

TRACKMAN’S ANSWER TO DEFENDANTS’ COUNTERCLAIM

Plaintiff and Counterclaim-defendant TrackMan, Inc. (“TrackMan”) answers the counterclaim of Defendants and Counterclaimants GSP Golf AB d/b/a GSPro and Davor Bogavac (collectively, “Defendants”) (ECF No. 21). To the extent any of the headers in the counterclaim contain any allegations, TrackMan denies them.

1. TrackMan denies the allegations in paragraph 1 of the counterclaim.
2. TrackMan denies the allegations in paragraph 2 of the counterclaim.
3. TrackMan admits that its golf simulation software Virtual Golf 2 works only with

TrackMan’s launch monitors. TrackMan admits that a launch monitor is an electronic device

that tracks data related to a golf club's swing and a golf shot's trajectory. TrackMan admits that GSPro is compatible with third-party launch monitors. TrackMan admits that, after filing the complaint against Defendants, it sent a letter to Foresight notifying it of the lawsuit and requesting that Foresight not violate TrackMan's legal rights. TrackMan denies the remaining allegations in paragraph 3 of the counterclaim.

4. TrackMan denies the allegations in paragraph 4 of the counterclaim.

5. TrackMan lacks knowledge or information sufficient to form a belief about the truth of the allegation that "[t]he OPCD Courses are designed by simulation golf enthusiasts using a community-developed methodology called Open Platform Course Design ('OPCD') and hosted by a community-supported, third-party service, Simulator Golf Tour ('SGT')."

TrackMan admits that SGT "facilitates tournament play, teams, and rankings, and moderates an active online forum for GSPro users." TrackMan denies the remaining allegations in paragraph 5 of the counterclaim.

6. TrackMan denies the allegations in paragraph 6 of the counterclaim.

7. TrackMan admits that "JNPG was compatible with multiple launch monitors, loaded user-generated courses ('CF Courses') created with PP's course design tool, Course Forge ('CF'), and offered tournament play through a third party, Online Golf Tour ('OGT')."

TrackMan denies the remaining allegations in paragraph 7 of the counterclaim.

8. TrackMan lacks knowledge or information sufficient to form a belief about the truth of the allegation that "thousands of people now are able to play GSPro using multiple third-party launch monitors, to enjoy hundreds of OPCD Courses designed without the use of CF, and to compete with players from around the world – all from the comfort of their own homes."

TrackMan denies the remaining allegations in paragraph 8 of the counterclaim.

9. TrackMan lacks knowledge or information sufficient to form a belief about the truth of the allegation that “GSP incorporated into GSPro code that affirmatively blocks users from loading CF Courses.” TrackMan denies the remaining allegations in paragraph 9 of the counterclaim.

10. TrackMan denies the allegations in paragraph 10 of the counterclaim.

11. TrackMan admits that, after TrackMan filed the complaint in this action, requested that Defendants waive service of the summons and complaint (which Defendants refused), and attempted service under the Hague Convention, Defendants sent a letter dated March 27, 2023, regarding Defendants’ position on the merits of the action. TrackMan admits that, in a letter dated June 16, 2023, it responded, noting *inter alia* that the appropriate process is for Defendants to accept service of the complaint and to permit discovery relevant to TrackMan’s claims – to which Defendants did not respond. TrackMan admits that Defendants seek a declaration that they did not violate any of TrackMan’s copyrights or contractual rights. TrackMan denies the remaining allegations in paragraph 11 of the counterclaim.

THE PARTIES

12. TrackMan denies the allegations in paragraph 12 of the counterclaim.

13. TrackMan denies the allegations in paragraph 13 of the counterclaim.

14. TrackMan denies the allegations in paragraph 14 of the counterclaim.

JURISDICTION

15. TrackMan denies the allegations in paragraph 15 of the counterclaim.

16. TrackMan denies the allegations in paragraph 16 of the counterclaim.

FACTS

17. TrackMan admits that Perfect Parallel released its golf simulation software, JNPG, on or about May 3, 2016. TrackMan admits that JNPG has included the following features: (a) Course Forge (CF); (b) OGT; and (c) launch monitor sim connectors. TrackMan denies the remaining allegations in paragraph 17 of the counterclaim.

18. TrackMan admits that, in or about October 2016, Perfect Parallel released CourseForge as a free download available to users of JNPG, subject to the End User License Agreement. TrackMan admits that Perfect Parallel described CourseForge as its “course design plugin for the Unity 5.2.3 editor” that allowed users to “create [their] own playable courses for Jack Nicklaus Perfect Golf which [they could] . . . share with anyone who plays the game.” TrackMan admits that CourseForge courses are packaged as a “Unity Asset Bundle.” TrackMan denies the remaining allegations in paragraph 18 of the counterclaim.

19. TrackMan admits that Defendants purport to quote the language of the End User License Agreement, with added emphasis. TrackMan denies the remaining allegations in paragraph 19 of the counterclaim.

20. TrackMan admits that a third-party website and service, OGT, organized, promoted, facilitated, and recorded the results of multiplayer JNPG games and tournaments. TrackMan lacks knowledge or information sufficient to form a belief about the allegation that OGT hosted, organized, and distributed more than 250 CF Courses that JNPG users designed using Course Forge. TrackMan denies the remaining allegations in paragraph 20 of the counterclaim.

21. TrackMan admits that users could play JNPG with TrackMan and third-party launch monitors. TrackMan admits that users could purchase a “sim pass” and download “sim

connector” software from Perfect Parallel for use with TrackMan and third-party launch monitors. TrackMan lacks knowledge or information sufficient to form a belief about the allegation that “JNPG users collectively invested millions of dollars to purchase JNPG-compatible launch monitors so that they could play JNPG with real clubs and balls” and that “[w]ithout sim connector functionality, users could play JNPG with only their PCs.” TrackMan denies the remaining allegations in paragraph 21 of the counterclaim.

22. TrackMan admits that it discontinued sim passes that would allow JNPG to connect with third-party launch monitors, and that it offered a one-year grace period during which the sim passes would remain active. TrackMan denies the remaining allegations in paragraph 22 of the counterclaim.

23. TrackMan admits that, after August 2020, users could play JNPG only on their PCs. TrackMan lacks knowledge or information sufficient to form a belief about the remaining allegations in paragraph 23 of the counterclaim.

24. TrackMan denies that Bogavac wrote code “from scratch.” TrackMan denies that the EULA permitted Defendants to develop GSPro. TrackMan lacks knowledge or information sufficient to form a belief about the remaining allegations in paragraph 24 of the counterclaim.

25. TrackMan lacks knowledge or information sufficient to form a belief about the allegations in paragraph 25 of the counterclaim.

26. TrackMan denies that the EULA permitted Defendants to develop GSPro. TrackMan denies that Defendants’ development of GSPro and use of CF Courses was “only personal and non-commercial.” TrackMan denies that no fees were charged and that no money was generated from Mr. Bogavac’s sharing his software. TrackMan lacks knowledge or

information sufficient to form a belief about the remaining allegations in paragraph 26 of the counterclaim.

27. TrackMan lacks knowledge or information sufficient to form a belief about the allegations in paragraph 27 of the counterclaim.

28. TrackMan admits that shortly after its announcement with respect to JNPG, the operator of OGT announced plans to discontinue the OGT service. TrackMan lacks knowledge or information sufficient to form a belief about the remaining allegations in paragraph 28 of the counterclaim.

29. TrackMan lacks knowledge or information sufficient to form a belief about the allegations in paragraph 29 of the counterclaim.

30. TrackMan denies that Defendants played no role in the development and implementation of the SGT API. TrackMan lacks knowledge or information sufficient to form a belief about the remaining allegations in paragraph 30 of the counterclaim.

31. TrackMan admits that it allowed an SGT connection for users with valid sim passes during the remainder of the grace period. TrackMan denies the remaining allegations in paragraph 31 of the counterclaim.

32. TrackMan lacks knowledge or information sufficient to form a belief about the allegations in paragraph 32 of the counterclaim.

33. TrackMan admits that “OPCD Courses designed with Unity are packaged as standard Unity Asset Bundles.” TrackMan admits that OPCD holds itself out as being a process using various tools. TrackMan lacks knowledge or information sufficient to form a belief about the remaining allegations in paragraph 33 of the counterclaim.

34. TrackMan admits that simulator passes stopped working on September 1, 2020, and after that, JNPG could be played only on personal computers. TrackMan denies the remaining allegations in paragraph 34 of the counterclaim.

35. TrackMan admits that Defendants released a version of GSPro in the second quarter of 2021 and released another version of GSPro on October 1, 2021. TrackMan denies the remaining allegations in paragraph 35 of the counterclaim.

36. TrackMan denies that “none” of the referenced code “came from” JNPG, TrackMan, or Perfect Parallel. TrackMan lacks knowledge or information sufficient to form a belief about the remaining allegations in paragraph 36 of the counterclaim.

37. TrackMan denies the allegations in paragraph 37 of the counterclaim.

38. TrackMan admits that it sent a cease-and-desist letter dated February 26, 2021 to Defendants. TrackMan admits that, in response, Defendants denied that they violated any of TrackMan’s rights. TrackMan denies the remaining allegations in paragraph 38 of the counterclaim.

39. TrackMan admits that it requested that CF Courses not be used in connection with GSPro. TrackMan denies the remaining allegations in paragraph 39 of the counterclaim.

40. TrackMan lacks knowledge or information sufficient to form a belief about the allegations in paragraph 40 of the counterclaim.

41. TrackMan lacks knowledge or information sufficient to form a belief about the allegations in paragraph 41 of the counterclaim.

42. TrackMan lacks knowledge or information sufficient to form a belief about the allegations in paragraph 42 of the counterclaim.

43. TrackMan admits that Defendants sent TrackMan a letter dated May 11, 2021, and that paragraph 43 purports to quote from that letter. TrackMan denies the remaining allegations in paragraph 43 of the counterclaim.

44. TrackMan admits that Defendants released a version of GSPro in the second quarter of 2021 and released another version of GSPro on October 1, 2021. TrackMan lacks knowledge or information sufficient to form a belief about the remaining allegations in paragraph 44 of the counterclaim.

45. TrackMan admits that paragraph 45 purports to quote from OPCD. TrackMan denies the remaining allegations in paragraph 45 of the counterclaim.

46. TrackMan admits that its golf simulation software works only with TrackMan launch monitors. TrackMan admits that GSPro is compatible with third-party launch monitors. TrackMan denies the remaining allegations in paragraph 46 of the counterclaim.

47. TrackMan admits that on January 24, 2023, Defendants and Foresight Sports announced that they entered into a commercial arrangement. TrackMan lacks knowledge and information sufficient to form a belief about the remaining allegations in paragraph 47 of the counterclaim.

48. TrackMan lacks knowledge and information sufficient to form a belief about the allegations in paragraph 48 of the counterclaim.

49. TrackMan admits that on January 24, 2023, Defendants and Foresight Sports announced that they entered into a commercial arrangement. TrackMan admits that paragraph 49 purports to quote from the announcement. TrackMan lacks knowledge and information sufficient to form a belief about the remaining allegations in paragraph 49 of the counterclaim.

50. TrackMan admits it filed the complaint in this action on January 24, 2023.

TrackMan admits that, after filing the complaint against Defendants, it sent a letter to Foresight notifying it of the lawsuit and requesting that Foresight not violate TrackMan's legal rights.

TrackMan denies the remaining allegations in paragraph 50 of the counterclaim.

51. TrackMan admits that paragraph 51 purports to quote from a SkyTrack Facebook posting. TrackMan denies the remaining allegations in paragraph 51 of the counterclaim.

52. TrackMan lacks knowledge or information sufficient to form a belief about the allegation that "[m]embers of the community expended significant time and effort to develop software to support GSPro – including OPCD and SGT" TrackMan denies the remaining allegations in paragraph 52 of the counterclaim.

FIRST CAUSE OF ACTION

Declaratory Judgment of Non-Infringement and Non-Breach of Contract (28 U.S.C. § 2201(a))

53. TrackMan repeats and incorporates by reference its responses in the preceding paragraphs, as if fully set forth herein.

54. TrackMan admits that there is an actual controversy between the parties. TrackMan admits that Defendants and Counterclaim Plaintiffs seek a declaration that they have not violated TrackMan's copyrights or breached the Perfect Parallel End User License Agreement. TrackMan denies the remaining allegations in paragraph 54 of the counterclaim.

55. TrackMan admits the allegations in paragraph 55 of the counterclaim.

56. TrackMan admits the complaint alleges that Defendants and Counterclaim Plaintiffs copied and incorporated TrackMan's copyright-protected Course Forge code base directly into the GSPro Software for commercial purposes. TrackMan denies the remaining allegations in paragraph 56 of the counterclaim.

57. TrackMan admits the complaint alleges that Defendants and Counterclaim Plaintiffs downloaded, accessed, copied, and used Perfect Golf, Virtual Golf, and Virtual Golf 2's copyright-protected API data structures inside the GSPro Software without permission and for commercial purposes. TrackMan denies the remaining allegations in paragraph 57 of the counterclaim.

58. TrackMan admits the complaint alleges that Defendants and Counterclaim Plaintiffs violated TrackMan's rights in its copyright-protected sim connector. TrackMan denies the remaining allegations in paragraph 58 of the counterclaim.

59. TrackMan admits the complaint alleges that Defendants and Counterclaim Plaintiffs violated the Perfect Parallel End User License Agreement. TrackMan denies the remaining allegations in paragraph 59 of the counterclaim.

DEMAND FOR RELIEF

TrackMan denies that Defendants are entitled to the judgment and relief requested in the counterclaim or in Defendants' demand for relief. Defendants' demand for relief should be denied, and Defendants should take nothing.

Respectfully submitted,

Dated: August 28, 2023

GOODWIN PROCTER LLP

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